HONOURABLE SRI JUSTICE J.CHELAMESWAR
AND
HONOURABLE SRI JUSTICE D.APPARAO

WRIT PETITION No.11321 of 2006

31-07-2006

Between:

K.Chinnamma .. Petitioner.

and

1. The Collector and District Magistrate,
   Srikakulam District, Srikakulam and others.

   ..
   Respondents.

ORDER (Per Hon'ble Sri Justice D.Apparao):

K.Lakshminarayana was ordered to be detained by the 1st respondent-District Collector and District Magistrate, Srikakulam District, in R.C.No.35/2006/B1, dated 03-02-2006 under Section 3(1) and (2) read with Section 2(a) & (b) of A.P.Prevention of Dangerous Activities of Boorleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffaic Offenders and Land Grabbers Act, 1986 (for short 'the Act').

2. The petitioner, the wife of Lakshminarayana, challenges the validity of the order of detention by the 1st respondent, as illegal, arbitrary, unconstitutional and violative of Article 22 of the Constitution of India and seeks a declaration that the order is bad in law and prays that the detenu to be released forthwith by granting a writ of habeas corpus.

3. The ground of detention is based on the fact that when the detenu along with three others was transporting 160 liters of I.D. Liquor on 21-05-2003 at about 3.00 A.M., the Excise Sub-Inspector arrested two of them and a case in P.R. No.51 of 2003 was registered under Section 7 (A) read with 8 (e) of the A.P. Prohibition Act, 1995, for illicit possession of I.D. Liquor. The detenu and one Matta Kurmarao ran away. Sample was sent to the Chemical Examiner, Chittoor for analysis. The report of the Chemical Examiner, *inter alia*, states that the sample is illicitly distilled liquor unfit for human consumption and injurious to health. Later he was arrested and was released on bail and a case in

C.C.No.444 of 2003 is pending before the learned Judicial First Class Magistrate, Sompeta for trial.

4. Again on 06-12-2004, at about 11.00 P.M. when the detenu along with five others found transporting 240 liters of I.D. Liquor, the Excise Sub Inspector of Police arrested all of them and the I.D.Liquor was seized. A case in P.R.No.276 of 2005 was registered under Section 7 (A) read with 8 (e) of the A.P. Prohibition Act, 1995, for illicit possession of I.D. Liquor. A sample from the seized arrack was sent to the Chemical Examiner, Chittoor for analysis. The report of the Chemical Examiner, *inter alia*, states that the sample is illicitly distilled liquor unfit for human consumption and injurious to health. Charge sheet was filed and the investigation is pending.

5. Again on 02-09-2005, at about 11.00 A.M. the detenu along with two others found possession of 50 ltrs of I.D. Liquor. The Excise Sub Inspector, Sompeta, arrested all of them and the contraband was seized. A case in P.R.No.206 of 2005 was registered under Section 7 (A) read with 8 (e) of the A.P. Prohibition Act, 1995, for illicit possession of I.D. Liquor. A sample from contraband was sent to the Chemical Examiner, Chittoor for analysis. The report of the Chemical Examiner, *inter alia*, states that the sample is illicitly distilled liquor unfit for human consumption and injurious to health. Charge sheet was filed and the investigation is pending.

6. Again on 08-10-2005, at about 05.30 A.M. the detenu along with three others found transporting 30 liters of I.D. Liquor. The Excise Circle Inspector, Sompeta, arrested all of them and seized the contraband. A case in P.R.No.254 of 2005 was registered under Section 7 (A) read with 8 (e) of the A.P. Prohibition Act, 1995, for illicit possession of I.D. Liquor. A

sample from contraband was sent to the Chemical Examiner, Chittoor for analysis. The report of the Chemical Examiner, *inter alia*, states that the sample is illicitly distilled liquor unfit for human consumption and injurious to health. Charge sheet was filed and the investigation is pending.

7. The detaining authority considering the material placed before him, opined that the detenu is involved of committing offences of illicit storage, transportation and sale and organization of Excise Crime in contravention of Section
7 (a) read with 8 (e) of A.P.Prohibition Act 1995. "Committing the above illegal activities and thus a bootlegger as defined under Section 2(b) of the A.P.Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (Act 1/86) is causing a grave wide spread danger to life and public health and thus the activities of the bootlegger is affecting adversely to the "Maintenance of the Public Order" in this area."

8. Through G.O.Rt.No.756, General Administration (Law & Order.II) Department, dated 13-02-2006, the Government approved the detention order. The Advisory Board had confirmed the detention order. Based on the said recommendation of the Advisory Board, the Government confirmed the orders of detention by G.O.Rt.No.1503, General Administration (Law & Order.II) Department, dated 17-03-2006 for a period of 12 months from the date of detention.

9. The wife of the detenu challenged the detention on the grounds that the Government has approved the order of detention within 12 days from the date of order, as such it has become invalid. It is contended that the order of detention cannot exceed

three months at any one time. However, the order of detention is made for twelve months contrary to Section 3 (2) of the Act and Articles 14, 21 and 22 of the Constitution of India.

10. The thrust of the first argument is that the order of detention was not approved by the Government within twelve days as contemplated under Section 3 (1) of the Act. A perusal of the record shows that the District Collector and Magistrate passed the order of detention on 03-02-2006. It was approved on 13-02-2006. Even if the dates of 03-02-2006 and 13-02-2006 are also taken for calculation, it would be still within twelve days.

11. Coming to the facts since the initial order of detention should not be more than 12 days, necessarily, the order of detention must be approved by the Government within the said period. The order of detention was passed on 03-02-2006 and the Government approved it on 13-02-2006 within 12 days. There is no violation in this regard.

12. The other contention was that the initial order of detention cannot exceed three months at any one time. At any rate, it cannot be made for 12 months at a stretch. I do not see how this contention would be taken in the light of the decision of the Supreme Court in **HARPREET KAUR v. STATE OF MAHARASHTRA**[1]**.** While considering the similar provision under Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers land Drug Offenders Act, 1981 which is *impari materia* to Section (3) of the A.P.Act 1 of 1986. The learned Judges repelled the contention.

> "Section 3 reads as follows:
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> > "3. Power to make orders detaining certain persons:- (1) The State Government may, if satisfied with respect to any person that with a view to preventing him from acting in

any manner prejudicial to the maintenance of public order; it is necessary so to do, make an order directing that such person is detained.

(2) If, having regard to the circumstances prevailing or likely to prevail in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, the State Government is satisfied that it is necessary so to do, it may, by order in writing, direct, that during such period as may be specified in the order such District Magistrate or Commissioner of Police may also, if satisfied as provided in sub-section (1), exercise the powers conferred by the said sub-section:

Provided that the period specified in the order made by the State Government under this sub-section shall not, in the first instance, exceed three months, but the State Government ;may, if satisfied as aforesaid that it is necessary so to do, amend such order to extend such period from time to time by any period not exceeding three months at any one time.

(3) When any order is made under this section by an officer mentioned in sub-section (2), he shall forthwith report the fact to the State Government, together with the grounds on which the order has been made and such other particulars as, in his opinion, have a bearing on the matter, and no such order shall remain in force for more than twelve days after the making thereof, unless, in the meantime, it has been approved by the State Government."

The learned Judge held:

"A plain reading of the section shows that the State Government under Section 3 (1), if satisfied, with respect to any person that with a view to preventing him from acting in a manner prejudicial to the maintenance of "public order", it is necessary so to do, make an order of detention against the person concerned. Sub-section (2) of Section 3 deals with the delegation of powers by the State Government and provides that if the State Government is satisfied, having regard to the circumstances prevailing in any area within the local limits of the jurisdiction of a District Magistrate or a Commissioner of Police, it is necessary to empower District Magistrate or the Commissioner of Police, as the case may be to exercise the powers of the State Government to order detention of a person as provided by sub-section (1), then the State Government may, by an order in writing direct that during *such period as*

may be specified in the order, the District Magistrate or the Commissioner of Police may also if satisfied as provided in sub-section (1), exercise the powers of the State Government as conferred by sub-section (1). The proviso to sub-section (2), only lays down that *the period of delegation of powers, specified in the order to be made by the State Government under sub-section* (2), delegating to the District Magistrate or the Commissioner of Police the powers under sub-section (1) *shall not in the first instance exceed three months.* The proviso, therefore, has nothing to do with the period of detention of a detenu. The maximum period of detention is prescribed under Section 13 of the Act which lays down that a person may be detained in pursuance of any detention order made under the Act, which has been confirmed under Section 12 of the Act. It is, therefore, futile to contend that the order of detention in the instant case was vitiated because it was for a period of more than three months. The second argument, therefore, also fails." (emphasis supplied)

13. In the counter the detaining authority has categorically mentioned that the order of approval of detention by the Government placed before the Advisory Bard in its meeting held on 07-03-2006, which in-turn confirmed the order of detention. Thereupon, the Government by issuing G.O.Rt.No.1503, dated 17-03-2006 confirmed the order of detention. Therefore, the contentions raised in this regard have no legs to stand.

14. The learned counsel for the detenu contended that the detaining authority must be satisfied that the proposed detention is likely to indulge in such illegal activities in future also. This is a satisfaction that could be reasonably arrived at by the detaining authority only by examining the material that is produced by the authority proposing his detention. In such a process, a detaining authority may not always take into consideration a stray or solitary incident which may not give rise to a reasonable apprehension or satisfaction as to such future act of the proposed detenu.

Therefore, it is necessary for the authority proposing the detention of a person under the Act to produce such material, which shows the continuous previous illegal activities of the proposed detenu which would satisfy the detaining authority of the need for detaining such a person. In other words, the material produced by the authority proposing the detention should form a chain of incidents last of which will have to be proximate to the date of proposed detention while other acts must be proximate to each other.

15. This aspect of the matter is covered by a decision of the Supreme Court in **COLLECTOR & DISTRICT MAGISTRATE, W.G.DISTRICT, ELURU, A.P. AND OTHERS v. SANGALA KONDAMMA**[2]**.** It was a case where the order of detention was based on grounds relating to five incidents of boot-legging. The High Court held that two out of five grounds of detention were stale grounds and since the said two stale grounds could not be separated from the other grounds, the satisfaction of the detaining authority got vitiated and therefore the order of detention could not be sustained. Allowing the appeal, the Supreme Court held that if the facts placed before the detaining authority are proximate to each other and the last of the facts mentioned is proximate to the order of detention then the early incidents cannot be treated as stale and detention order cannot be set aside.

16. In the instant case, the order of detention was passed on 03-02-2006. It is seen that between the period 21-05-2003 and 08-10-2005, the detenu was involved in four cases of boot-legging, which are reasonably proximate to each other and the last of the incident being proximate to the order of detention, it cannot be said the detaining authority was not justified in treating

the two incidents as stale by taking them in isolation. The order of detention being proximate enough to each other, show the continuity of the acts of detenu. Therefore, we do not see any flaw in the order of detention nor can we say that the grounds are stale.

17. The learned counsel for the detenu contended that there is no material to show that the activities of the detenu as a boot-legger affect adversely or likely to affect adversely the maintenance of public order. A commission of an offence will not necessarily come within the purview of 'public order'. The offence alleged against the detenue in the order of detention and also the allegations made in the charge sheet could not be said to have created any feeling of insecurity or panic or terror among the members of the public of the area in question giving rise to the question of maintenance of public order. In support of his contention, he relied **PIYUSH v. POLICE COMMISSIONER, AHMEDABAD**[3]**.** That was a case where the detenu was found transporting foreign liquor. It would not cause widespread danger to life or public health. Obviously, considering the nature of substance that was transported, it was held that the conduct of the person does not create panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of 'public order'.

18. The learned counsel relied **OMPRAKASH v. COMMISSIONER OF POLICE**[4] for the same proposition where the detenue was found possessing deadly weapons beating innocent citizens. Creating fear by threatening and carrying on criminal anti-social activities by selling country and foreign liquor.

Relying the earlier decision referred to, it was held that the materials available on record were not sufficient and adequate for holding that the alleged prejudicial activities of the detenue have either affected adversely or likely to affect adversely the maintenance of public order.

19. In **HARPREET KAUR's case** (1 supra)**,** the Supreme Court while dealing the case of detenue indulging in transporting of illicit liquor and distributing the same in the locality and was keeping arms with him while transporting liquor, it was held:

> "The activities of the detenu were not merely bootlegging but went further to adversely affect the even tempo of the society by creating a feeling of insecurity among those who were likely to depose against him as also the law enforcement agencies. The fear psychosis created by the detenu in the witnesses was aimed at letting the crime go unpunished which has the potential of the society, and not merely some individual, to suffer. The activities of the detenu, therefore, squarely fall within the deeming provision enacted in the Explanation of Section 2 (a) of the Act, and as such the activities were not merely prejudicial to the maintenance of 'law and order' but were prejudicial to the maintenance of "public order".
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> The Explanation to Section 2 (a) brings into effect a legal fiction as to the adverse effect on 'public order'. It is the fall-out of the activity of the "bootlegger" which determines whether 'public order' has been affected within the meaning of this deeming provision or not. This legislative intent has to be kept in view while dealing with detentions under the Act."

20. The learned Advocate General contended that, in the instant case, the detaining authority relying report of the chemical examiner, opined that it was illicitly distilled liquor unfit for human consumption and injurious to public health, causing prejudicial to the maintenance of public order and tranquility in public life. The order of detention therefore must be upheld.

21. Coming to the facts, the expert opinion is unambiguous

and specific that it is unfit for human consumption. A Division Bench of this Court in **B.VIJAYA KUMAR v. SECRETARY TO GOVERNMENT**[5], while considering a case where the expert opined that it was unfit for human consumption, held:

> "It is implied that the liquor would cause widespread danger to life or public health. It cannot be gainsaid that liquor unfit for human consumption would necessarily cause grave and widespread danger to life or public health. If it is allowed to be sold in the State and consumed by the public at large. " In other words "that if the report is indicative of the fact that illicitly distilled liquor is unfit for human consumption, it impliedly means that consumption of such a liquor would cause danger to life and public health."

22. In the above said case, the detaining authority had referred only one case when contention was raised that the ground of detention was only one and therefore, the requirement of phrase in the definition of Section 2 (a) of the Act was not satisfied. It was held:

> "Even a single activity of a person referred to in Clause 2 (a) of the Act would have the effect of acting in any manner prejudicial to the maintenance of public order. Even a single activity which falls within Clause 2 (a) of the Act would be enough to bring the case within the ambit of Section 3 (1) of the Act."

23. In order to appreciate the proposition, Section 2 (a) of the Act is extracted hereunder:

> "(a) "Acting in any manner prejudicial to the maintenance of public order" means when a boot-legger, a dacoit, a drug-offender, a goonda, an immoral traffic offender or a land-grabber is engaged or is making preparations for engaging, in any of his activities as such, which affect adversely, or are likely to affect adversely, the maintenance of public order:
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> Explanation:- For the purpose of this clause public order shall be deemed to have been affected adversely, or shall be deemed likely to be affected adversely *inter alia,* if

any of the activities of any of the persons referred to in this clause directly, or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any action thereof or a grave or widespread danger to life or public health."

The learned Judge held:

"From a plain reading of the definition, it is clear that the phrase "acting in any manner prejudicial to the maintenance of public order" takes in its fold the activity of a hoot-legger, a dacoit, a drug-offender, a goonda, an immoral traffic offender or a land grabber, who is engaged or is making preparation for engaging any of its activities as such which affect adversely or likely to affect adversely the maintenance of public order. The explanation appended to the above definition clarified that for the purpose of Clause 2(a), 'public order' shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely, *inter alia,* if any of the activities of any person referred to in the said clause, directly or indirectly, is causing or calculated to cause any harm, danger or alarm or a feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life or public health."

24. Following the said case, a Full Bench of this Court in a decision reported in **DODDI SHARADA v. COLLECTOR AND DISTRICT MAGISTRATE**[6], opined:

"Mere sale of illicit liquor not a relevant ground for detention. However, if detaining authority is satisfied on material before him that such illicit liquor would cause danger to public health, it is a relevant ground for detention."

It further held:

"The opinion of the public Analyst that sample of illicit liquor seized is not potable or not fit for human consumption is relevant material for arriving at subjective satisfaction by detaining authority that it would cause danger to public health for detaining a person under preventive detention."

25. Since this is a case where the illicit arrack transported by the detenu was harmful and it contains substance which would cause danger to the life of public health, it would attract Section 3 (1) of the Act. The dicta laid by Full Bench decision of this Court in **Doddi Sharada's case** (6 supra), applies in all fours to the facts of the present case. Since there is a danger to public health or life, it cannot be said that the detenu had not acted in a manner prejudicial to the maintenance of public order. Therefore, we uphold the order of detention.

26. Accordingly, the Writ Petition is dismissed. No costs.

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(J.CHEMALESWAR, J)

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July 31, 2006 **(D.APPARAO, J)**

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[1] (1992) 2 Supreme Court Cases 177

[2] 2005 (3) Supreme Court Cases 666

[3] AIR 1989 SUPREME COURT 491

[4] AIR 1990 SUPREMECOURT 496

[5] 1997 (3) ALD 266 (D.B.)

[6] 2005 (2) ALT 244 (F.B.)